

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Esme Trontz	Team: Squad #2	CCRB Case #: 201909896	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/10/2019 8:21 PM	Location of Incident: § 87(2)(b)	Precinct: 66	18 Mo. SOL 5/10/2021	EO SOL 12/25/2021	
Date/Time CV Reported Thu, 11/14/2019 10:19 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 11/14/2019 10:19 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ernesto Marks	13948	946759	066 PCT
2. POM Yuhui Chen	12623	965982	066 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ernesto Marks	Abuse: Police Officer Ernesto Marks forcibly removed § 87(2)(b) to the hospital.	
B.POM Yuhui Chen	Abuse: Police Officer Yuhui Chen forcibly removed § 87(2)(b) to the hospital.	
C.POM Yuhui Chen	Abuse: Police Officer Yuhui Chen entered § 87(2)(b) in Brooklyn.	
D.POM Yuhui Chen	Abuse: Police Officer Yuhui Chen searched § 87(2)(b) in Brooklyn.	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on November 14, 2019.

On November 10, 2019, at 8:21 p.m., § 87(2)(b) a 5'1" tall, 144-pound, § 87(2)(b)-old female called 911 to report that her neighbors pushed her at her residence at § 87(2)(b) in Brooklyn. Police Officers Ernesto Marks and Yuhui Chen of the 66th Precinct responded to her home at § 87(2)(b). The officers spoke with § 87(2)(b) and her neighbor from § 87(2)(b), then left the building without taking any action. At 9:36 p.m., § 87(2)(b) called 911 again, and Police Officers Marks and Chen responded again. § 87(2)(b) spoke with the officers at the threshold of her door. Police Officer Marks handcuffed § 87(2)(b) screamed several times that she needed to "close her home" and told the officers they could not go inside her apartment. Each officer held one of § 87(2)(b)'s arms and walked her downstairs to an ambulance (**Allegations A and B: Abuse of Authority- Forcible Removal to Hospital**, § 87(2)(g)). Police Officer Chen then went into § 87(2)(b)'s apartment with her superintendent to look for her key to lock her door (**Allegation C, Abuse of Authority- Entry of Premises**, § 87(2)(g)). **Allegation D, Abuse of Authority- Search of Premises**, § 87(2)(g)). Neither Police Officer Chen nor the superintendent found the key nor could they lock the door from the inside. Police Officer Chen went downstairs to the ambulance. § 87(2)(b) told her friend where her keys were in her apartment, and again that the officers could not enter the apartment. Police Officer Chen followed the friend into the apartment to find the key and lock the door (**within Allegations C and D**). § 87(2)(b) was transported by ambulance to § 87(2)(b), where she was psychiatrically evaluated and then released. No one was arrested or issued a summons during this incident.

BWC videos of Police Officers Marks and Chen visiting § 87(2)(b)'s apartment the second time were obtained for this incident, which are attached in IA #87 and summarized in IA #88 (Board Review #01, #02). Relevant subclips of Police Officer Chen's BWC footage are attached in IAs #112 and #113. (Board Review #03, #04).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Ernesto Marks Forcibly Removed § 87(2)(b) to the Hospital.

Allegation (B) Abuse of Authority: Police Officer Yuhui Chen Forcibly Removed § 87(2)(b) to the Hospital.

§ 87(2)(b) provided a telephone statement on November 20, 2019 (Board Review #05). She was interviewed at the Borough Park Branch of the Brooklyn Public Library on December 4, 2019. Police Officers Marks and Chen were interviewed at the CCRB on December 27, 2019. Police Officer Chen was interviewed again at the CCRB on February 6, 2020.

It is undisputed that § 87(2)(b) lived alone and was alone in her apartment on the night of November 10, 2019. She had ongoing issues with her neighbors regarding noise. Police Officers Marks and Chen responded to § 87(2)(b)'s apartment twice. In the first visit, they responded to § 87(2)(b)'s 911 call that her neighbor pushed her. The officers ultimately told § 87(2)(b) they could not do anything. When the officers responded to § 87(2)(b)'s second 911 call that her other neighbors were having a loud party, § 87(2)(b) argued with Police Officer Marks. Police Officer Marks handcuffed § 87(2)(b) and Police Officer Chen called EMS. The officers removed § 87(2)(b) to the ambulance and she was transported to § 87(2)(b).

Police Officers Marks and Chen testified that they spoke with § 87(2)(b)'s neighbor in § 87(2)(b), who she alleged had pushed her, during their first visit. The neighbor told the officers that earlier that day, § 87(2)(b) had come to his apartment, yelled that his kids made too much noise, and stepped one foot into his apartment. The neighbor then pushed § 87(2)(b) out of his apartment and closed the door. Police Officer Marks further testified that the neighbor did not express that he felt threatened by § 87(2)(b) nor did he want to press charges against her.

Before responding to § 87(2)(b)'s complaint of a loud party, the officers spoke to the building superintendent in the lobby who said he had not heard loud noises coming from any apartment. Neither officer heard loud noises. The officers went up to § 87(2)(b)'s apartment. § 87(2)(b) screamed at the officers that she did not want them there and that she wanted different officers to respond. At no point did § 87(2)(b) threaten to harm herself or anyone else. The officers did not receive information to suggest that § 87(2)(b) was emotionally disturbed or psychiatrically unstable. However, Police Officer Marks was still concerned that § 87(2)(b) was a threat to herself and her neighbors because she yelled, complained of a nonexistent party, lived alone, and had entered her neighbor's apartment. Police Officer Marks believed § 87(2)(b) was at a greater risk of self-harm because she lived alone; no one could help her if her mental state became dangerous. Both officers believed § 87(2)(b) could have tried to harm her neighbors because she entered the neighbor's apartment earlier that day.

Both officers' BWC videos show only a few seconds before Police Officer Marks handcuffs § 87(2)(b). § 87(2)(b) stands in the threshold of her front door and appears to be upset while she speaks with Police Officer Marks, who is standing in the hallway (Board Review #01). Because the audio does not begin until 30 seconds into the video, none of the discussion between § 87(2)(b) and the officers immediately before they decide to remove her to the hospital can be heard.

According to Patrol Guide Procedure 221-13, an Emotionally Disturbed Person ("EDP") is a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others (Board Review #06). Officers are instructed to take the EDP into protective custody in these cases. Patrol Guide Procedure 216-01 authorizes officers to request an ambulance in these cases and instructs officers to cooperate with medical personnel in a reasonable manner once the person is in the care of ambulance or hospital personnel (Board Review #06).

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Allegation C: Police Officer Yuhui Chen entered § 87(2)(b) in Brooklyn.
Allegation D: Police Officer Yuhui Chen searched § 87(2)(b) in Brooklyn.

It is undisputed that Police Officer Chen entered § 87(2)(b)'s apartment twice after she was removed to the ambulance to find her keys and lock her apartment. At some point, § 87(2)(b) made it explicitly clear that she did not want either officer entering her apartment. The first time Police Officer Chen entered the apartment, he entered with § 87(2)(b)'s superintendent but did

not find the keys. Police Officer Chen later entered the apartment again with § 87(2)(b)'s friend, who ultimately found her keys and locked her apartment.

Police Officer Chen testified that § 87(2)(b) made clear at some point during the incident that she did not want either officer to enter her apartment, though he could not remember whether she said so before or after his first entry. He testified that regardless of § 87(2)(b)'s consent, he would have entered her apartment to find the key and lock her door. He was responsible for locking the apartment because § 87(2)(b) lived alone and therefore no one else was available to lock the door. Leaving the door unlocked could allow someone else to enter the apartment and steal her belongings. He could not cite a specific Patrol Guide procedure that established this responsibility.

In the first subclip of Police Officer Chen’s BWC footage, after § 87(2)(b) is pulled from her apartment and handcuffed, she says, “I need to close my home!” several times (Board Review #03). § 87(2)(b) screams, “You are not going to go in my home,” multiple times. The officers walk § 87(2)(b) down the stairs, where they meet a man who Police Officer Chen identified in his interview as the superintendent. Police Officer Chen enters § 87(2)(b)’s apartment. He looks behind her front door, then walks down the hallway toward the kitchen and shines his phone’s flashlight on the walls. He and the superintendent try to lock the door without the keys but with no success. They both look around the apartment further. Police Officer Chen does not open any compartments during this visit.

The second subclip of Police Officer Chen's BWC footage shows § 87(2)(b)'s friend talking to her from the back of the ambulance (Board Review #04). She describes the location of her keys so he can retrieve them. When Police Officer Marks says Police Officer Chen will accompany the man, § 87(2)(b) yells, "no one in my home." Police Officer Marks tells the man to pretend he is going alone, but that Police Officer Chen will accompany him to make sure he does not steal anything. Police Officer Chen accompanies the man to the apartment who finds the keys and locks the door.

According to Brigham City v. Stuart (547 U.S. 398) [2006], officers may not enter a home without consent or a warrant unless there is an emergency or exigent circumstances (Board Review #07). Neither Patrol Guide Procedure 221-13 nor Patrol Guide Procedure 216-01 states whether officers are required or encouraged to secure the residence of an individual who has been removed to the hospital (Board Review #06).

§ 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (Board Review #08).

- Police Officer Marks has been a member-of-service for 11 years and has been a subject in four CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Chen has been a member-of-service for one year. This is the first complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation for this complaint § 87(2)(b)
- A Notice of Claim search was requested from the New York City Office of the Comptroller on March 2, 2020. The results of the search will be included in the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 2

Investigator: Esme Trontz Inv. Esme Trontz 04/06/2020
Signature Print Title & Name Date

Squad Leader: <u>Alexander Opoku-Agyemang</u> Signature	<u>IM Alexander Opoku-Agyemang</u> Print Title & Name	<u>4/7/2020</u> Date
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Reviewer: _____

Signature _____ Print Title & Name _____ Date _____